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Supreme Court, U.S.
FILED
SEP 14 2004
OFFICE OF THE CLERK

No. 04-152

IN THE

Supreme Court of the United States

AMP, DDM, JM, DCM, KMR, and SMK,

Petitioners,

v.

CWM and ACM, by PAM, and DHM,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA COURT OF APPEALS

REPLY BRIEF

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Petitioners AMP, DDM, JM, DCM, KMR, and SMK ("Petitioners") have petitioned this Court to issue a writ of certiorari to review the decision of the Minnesota Court of Appeals reported as *In re Trusteeship of Trust Created under Trust Agreement Dated December 31, 1974*, 674 N.W.2d 222 (Minn. Ct. App. 2004), *petition for further review denied* (Minn. Apr. 20, 2004). (App. to Cert. Pet. ("App.") at A-1.) Petitioners now respectfully submit this Reply to the Brief in Opposition of Respondents CWM, PAM, and DHM ("Respondents").

Respondents devote a significant part of their brief to analysis of traditional state-law questions such as the operation of the Florida Determination of Parentage Act, Fla. Stat. ch. 742, and the common-law doctrine of collateral estoppel. This Court is not the proper forum for these questions. The proceedings in this Court do not concern paternity, parentage, or presumptions.[1] Rather, this case concerns a group of trust beneficiaries, with undisputed property interests protected by the Fourteenth Amendment Due Process Clause, whose rights will be summarily cut off

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1. This is not to say that Petitioners waive any objections to Respondents' interpretation and characterization of the state-law questions that are not before this Court. For example, Respondents claim that Florida law makes determinations of parentage "conclusive for all purposes." (Br. in Opp'n at 13.) However, neither of the statutes that Respondents cite for this proposition, Fla. Stat. §§ 742.011 and .091, states that any paternity presumption is "conclusive for all purposes" or that a child born to a married couple is presumed to be the biological issue of the couple. Also, the case that Respondents cite for the same proposition, *Knauer v. Barnett*, 360 So. 2d 399 (Fla. 1978), is a statutory-interpretation case concerning a statute, Fla. Stat. § 731.29 (1973), that has been repealed, 1974 Fla. Laws ch. 74-106, § 3.

as a result of a proceeding in a foreign state in which they had no right to participate.

In their brief, Respondents allege that there are jurisdictional defects in the Petition for Writ of Certiorari and that the Petition presents no constitutional issue worthy of consideration. In reality, Petitioners have satisfied all requirements for invoking this Court's jurisdiction. Moreover, as Petitioners demonstrated in the Petition, the court of appeals' decision will deprive them of their property without due process unless the decision is reversed, and courts in different states are misinterpreting and misapplying this Court's decision in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), to the detriment of trust beneficiaries' property rights, which are protected by the Fourteenth Amendment.

I.

THIS COURT HAS JURISDICTION TO GRANT THE PETITION FOR WRIT OF CERTIORARI.

Respondents have challenged this Court's jurisdiction to consider and grant the Petition for Writ of Certiorari. Because Petitioners have satisfied all the jurisdictional requirements for filing their Petition, Respondents' claims are without merit.

A. Petitioners were proper parties to the trust proceeding.

The Trustees started this action with a Petition for Order to Determine Beneficiaries under Minn. Stat. § 501B.16. That statute provides that "a **person interested** in the trust" may petition the district court for, among other things, an

order "to determine the persons having an interest in the income or principal of the trust and the nature and extent of their interests." Minn. Stat. § 501B.16(3) (emphasis added). Under Minnesota law, a person with an interest in a trust, such as a beneficiary, may participate as a separate party, independent of the trustee, in a proceeding under section 501B.16 commenced by the trustee. *See, e.g., In re Trust Created by Hill*, 509 N.W.2d 168, 172 (Minn. Ct. App. 1993).

Petitioners are beneficiaries of the Trusts at issue in this matter. Accordingly, Petitioners appeared in this action, were represented by their own counsel, and submitted separate briefing to the district court and the court of appeals. Petitioners' appearances at all stages of the trust proceeding are noted in the record. (App. A-1, A-21, & A-31.) Therefore, as persons who each have an interest in the Trusts, Petitioners were proper parties to the trust proceeding.

The Supreme Court Rules provide: "All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court." Sup. Ct. R. 12.6. "Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari." Sup. Ct. R. 12.4. Because Petitioners were proper parties to the trust proceeding, Petitioners have standing to file documents in the Court, including a petition for a writ of certiorari.

B. Petitioners properly raised the federal constitutional question in the proceedings below.

In their separate brief filed with the Minnesota Court of Appeals, Petitioners cited authority from this Court holding that "[d]ue process requires that those whose rights are to be

affected be afforded an opportunity to be heard" and argued that any determination of the rights of beneficiaries based on a foreign proceeding in which neither the beneficiaries nor the trustees had the right to participate would constitute a fundamental denial of due process. (Cert. Pet. at 5 n.8 (quoting brief).) Petitioners made the same Fourteenth Amendment due-process argument in their separate Petition for Further Review to the Minnesota Supreme Court. (*Id.* at 6 n.10 (quoting brief).) Therefore, Petitioners, independent of the Trustees, properly raised the federal question in the proceedings below.

Respondents characterize Petitioners' briefing of the federal question as "short" and insufficient. (Br. in Opp'n at 8.) But Respondents' claim is unpersuasive in light of this Court's opinion in *Braniff Airways, Inc. v. Nebraska State Board of Equalization & Assessment*, 347 U.S. 590 (1954). There, the petitioner timely raised its contention that its property was not taxable by the State of Nebraska because the property had attained no taxable situs in that state. *Id.* at 599. However, the petitioner erroneously based its contention on the Commerce Clause instead of the Fourteenth Amendment Due Process Clause. *See id.* at 598-99. This Court nonetheless considered the due-process argument:

> While the question of whether a commodity en route to market is sufficiently settled in a state for purpose of subjection to a property tax has been determined by this Court as a Commerce Clause question, the bare question of whether an instrumentality of commerce has tax situs in a state for the purpose of subjection to a property

> tax is one of due process. However, appellant timely raised and preserved its contention that its property was not taxable because such property had attained no taxable situs in Nebraska. Though inexplicit, we consider the due process issue within the clear intendment of such contention and hold such issue sufficiently presented.

Id. (citing *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928)) (footnotes omitted). Here, Petitioners' brief to the court of appeals and Petition for Further Review to the Minnesota Supreme Court show Petitioners' clear intent to ask the state courts to consider the Fourteenth Amendment due-process implications of holding that the earlier Florida proceeding—in which Petitioners had no right to participate—is binding on the Trusts and the beneficiaries. In light of *Braniff Airways* and other opinions of this Court,[2] Petitioners properly raised the due-process issue in the proceedings below and, therefore, preserved the issue for consideration by this Court.

C. The fact that Petitioners agreed with the Trustees does not deprive Petitioners of their right to seek relief from this Court.

Respondents claim that because Petitioners supported the Trustees' position, Petitioners somehow were not seeking relief on their own behalf and, therefore, have preserved no issue for review by this Court. (Br. in Opp'n at 7.)

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2. *See, e.g.*, *Chambers v. Mississippi*, 410 U.S. 284, 290 n.3 (1973) (addressing due-process argument despite state supreme court's failure to address argument when it was clear from the record petitioner repeatedly raised constitutional claim in lower courts).

Respondents cite no authority from this Court that expressly supports such a claim.[3]

Petitioners sought relief on their own behalf because they were represented by independent counsel and submitted separate briefing to the district court and court of appeals that demanded relief in their own right. (*See, e.g.*, Br. of Resp. Beneficiaries AMP, et al. to Minn. Ct. App. at 36.) The fact that Petitioners found merit in the Trustees' position does not deprive Petitioners of their right to petition this Court to reverse the decision of the court of appeals, nor does it

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3. Respondents make several unpersuasive arguments under Minnesota law in support of this claim. For example, Respondents maintain that Petitioners could not, on their own behalf, have "mount[ed] a judicial challenge to the [Respondents'] status as JHM's legitimate children" because of the doctrine of collateral estoppel. (Br. in Opp'n at 10-11.) Respondents furthermore claim that Petitioners "could not raise their own alleged due-process issues before the Minnesota Supreme Court." (*Id.* at 9.) First, Respondents did not raise these or any other preclusion arguments in their Opposition to Petitions for Further Review submitted to the Minnesota Supreme Court. On the contrary, in their brief to the Minnesota Supreme Court Respondents argued the merits of Petitioners' due-process claim, stating that this Court "has specifically rejected this [due-process] argument" and citing *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), as authority. (Opp'n to Pets. for Further Review at 3.) Second, the court of appeals based its decision only on the effect of the 1991 Florida divorce proceeding (App. A-13) and not on the 1989 Minnesota trust matter that Respondents argue bars Petitioners' claim (Br. in Opp'n at 10). As the court of appeals stated in its opinion, the 1989 trust matter concerned a fourth trust that is "not at issue here." (App. A-4.) Thus, the 1989 trust matter and Respondents' preclusion arguments under state law are immaterial to the proceedings before this Court, which concern only Petitioners' federal due-process challenge to the decision of the court of appeals.

deprive the Court of jurisdiction to consider Petitioners' due-process arguments.

The Supreme Court Rules provide that "[p]arties interested jointly, severally, or otherwise in a judgment may petition **separately** for a writ of certiorari." Sup. Ct. R. 12.4 (emphasis added). Petitioners have an interest in the judgment of the court of appeals because, to the extent that it requires payment of distributions to persons who are not proper beneficiaries of the Trusts, the judgment deprives Petitioners of their property without due process. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("[T]he fundamental requisite of due process of law is the opportunity to be heard." (quotation omitted)). Petitioners' property interest is entirely distinct from the Trustees' property interest. Thus, contrary to Respondents' claim (Br. in Opp'n at 8 n.6), Petitioners' participation in this matter is not dependent on the Trustees' continued participation.

In the final analysis, Petitioners properly raised their due-process argument below and are entitled to seek relief in this Court. Therefore, there is no jurisdictional defect in the Petition for Writ of Certiorari.

II.

THE PETITION PRESENTS IMPORTANT QUESTIONS OF CONSTITUTIONAL LAW THAT HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

Respondents claim that the Minnesota Court of Appeals' decision raises no question worthy of review and is consistent with long-established precedent. (Br. in Opp'n at 6.) Respondents' claim is belied by the undisputed facts.

The court of appeals held that to the extent that the 1991 Florida divorce proceeding determines by operation of law the paternity of DHM, CWM, and ACM, such a determination is binding on the Trusts. (App. A-15.) The court of appeals' opinion concluded—and Respondents do not dispute—that Petitioners had no right to participate in the 1991 Florida divorce proceeding. (App. A-11; Br. in Opp'n at 11.) Respondents furthermore cannot—and do not—dispute that Petitioners have a property interest in the Trusts, protected by the Fourteenth Amendment Due Process Clause. *See Mullane*, 339 U.S. at 313-14. Respondents likewise cannot—and do not—dispute that paying distributions to people who are not proper beneficiaries improperly depletes the Trusts' assets and deprives not only Petitioners but also all proper beneficiaries of their property interests. Therefore, the court of appeals' decision deprives Petitioners of their property without due process of law and in violation of the Fourteenth Amendment.

In addition to the due-process implications of the court of appeals' decision, which are worthy of consideration in their own right by this Court, this case presents other important questions, namely the scope and applicability of

this Court's decision in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989). In holding that Petitioners could not ask the district court to determine the proper beneficiaries of the Trusts because of the effect of the Florida proceeding, the court of appeals cited to and relied on *In re Trust Created by Agreement Dated December 20, 1961*, 765 A.2d 746 (N.J. 2001) ("*In re Johnson Trust*"). (App. A-16.) There, the New Jersey Supreme Court, relying **exclusively** on *Michael H.*, rejected a due-process claim made by a trust beneficiary. 765 A.2d at 362-63. But, as Petitioners have shown, the instant case and *Michael H.* are not comparable. (Cert. Pet. at 9.) Thus, state courts have misunderstood and misapplied *Michael H.* Therefore, the meaning and scope of *Michael H.*, especially when that case is applied in matters such as this where the property interest is so great, are important questions of constitutional law that can only be settled by this Court.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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